

1 Pages 1 - 46

2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 BEFORE THE HONORABLE THOMAS S. HIXSON, MAGISTRATE JUDGE

5 IN RE APPLE IPHONE ANTITRUST)
6 LITIGATION.) **No. 11-cv-06714-YGR (TSH)**
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)

DONALD R. CAMERON, et al.,)
Plaintiffs,)
VS.) **No. 19-cv-03074-YGR (TSH)**
APPLE INC.,)
Defendant.)
EPIC GAMES, INC.,)
Plaintiff/)
Counter-defendant,)
VS.) **No. 20-cv-05640-YGR (TSH)**
APPLE INC.,)
Defendant/)
Counterclaimant.)

19 San Francisco, California
Wednesday, December 30, 2020

21 **TRANSCRIPT OF REMOTE ZOOM WEBINAR PROCEEDINGS**

23 (Appearances on next page)

24 Reported Remotely By: Ana Dub, CSR 7445, RMR RDR CRR CCRR CRG
25 Official Reporter - U.S. District Court

APPEARANCES: (via Zoom Webinar)

Interim Class Counsel in In re Apple iPhone Antitrust Litigation, Case No. 4:11-06714-YGR:

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
750 B Street, Suite 1820
San Diego, California 92101

BY: RACHELE R. BYRD, ATTORNEY AT LAW

Interim Lead Class Counsel in Cameron, et. al v. Apple Inc.,
Case No. 4:19-cv-03074-YGR:

HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, Washington 98101

BY: ROBERT F. LOPEZ, ATTORNEY AT LAW

HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202C
Berkeley, California 94710

BY: BENJAMIN J. SIEGEL, ATTORNEY AT LAW

For Plaintiff Epic Games, Inc.:

CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, New York 10019

BY: LAUREN A. MOSKOWITZ, ATTORNEY AT LAW

For Defendant Apple Inc.:

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 900

BY: JAY P. SRINIVASAN, ATTORNEY AT LAW

GIBSON, DUNN & CRUTCHER LLP
555 Mission Street
San Francisco, California 9

BY: ETHAN D. DETTMER, ATTORNEY AT LAW

20

21

22

23

24

25

1 Wednesday - December 30, 2020

10:01 a.m.

2 P R O C E E D I N G S3 ---oo---4 **THE CLERK:** So we're here in Civil Action 11-6714, In
5 Re Apple iPhone Antitrust Litigation; and in Civil
6 Action 19-3074, Cameron, et al. versus Apple Inc.; and Civil
7 Action 20-5640, Epic Games Inc. versus Apple Inc.8 Counsel, please state your appearances. The Honorable
9 Thomas S. Hixson presiding. Let's start with the plaintiffs,
10 starting with the first case and go on down, and then the
11 defendants can chime in after.12 **MS. BYRD:** Good morning, Your Honor. This is Rachele
13 Byrd with Wolf Haldenstein on behalf of the consumer
14 plaintiffs.15 **THE COURT:** Good morning.16 **MR. LOPEZ:** Good morning, Your Honor. This is
17 Rob Lopez of Hagens Berman for the developer plaintiffs.18 **THE COURT:** Good morning.19 **MS. MOSKOWITZ:** Good morning, Your Honor. Lauren
20 Moskowitz from Cravath Swaine & Moore on behalf of Epic Games.21 **THE COURT:** Good morning.22 **MR. SRINIVASAN:** Good morning, Your Honor. Jay
23 Srinivasan from Gibson Dunn for Apple Inc.24 **THE COURT:** Good morning.

25 And I see two other individuals. Are they just listening,

1 or do they plan to participate?

2 **THE CLERK:** They're listening, Judge.

3 **THE COURT:** Okay. Great. Then we can go ahead. We
4 can just take the issues in order.

5 First, I have a question for Epic. Turning to the
6 non-U.S. documents, the letter brief attached as Exhibit 1,
7 Epic's first set of RFPs which had 70 RFPs, so I interpreted
8 you to be moving as to the non-U.S. documents for the first set
9 of RFPs, I guess all 70, Apple, in its portion of the letter
10 brief, says that, in fact, there are 83 letter briefs, which
11 would mean that there are -- sorry -- 83 RFPs. Not 83 letter
12 briefs, 83 RFPs -- which would mean that there are 13 others at
13 issue, but I don't have them in front of me.

14 So let me ask Epic to clarify which RFPs are at issue for
15 the non-U.S. documents.

16 **MS. MOSKOWITZ:** Your Honor, we do have another set of
17 RFPs, a set second that were not the subject of this motion,
18 but I think Your Honor's ruling would likely impact those as
19 well. But the general objection that Apple lodged to our first
20 set of RFPs was broadly applicable and would extend beyond just
21 those RFPs.

22 **THE COURT:** I see. Okay.

23 So let me just give you my tentative ruling, and then I'll
24 allow Epic to respond to it.

25 As a legal matter, I've read the cases that Epic cites,

1 and you've persuaded me that foreign conduct can sometimes be
2 relevant to a domestic antitrust lawsuit. It just depends on
3 the legal theories at issue and the types of documents that are
4 being sought.

5 You cited a case, the *Aspartame* case, that dealt with an
6 international price-fixing conspiracy; and that's an example of
7 where you would need to know what happened outside the
8 United States to really understand what is happening inside
9 the United States.

10 So I get that general principle that sometimes foreign
11 conduct can be relevant.

12 At the same time, I don't think it's true that there's a
13 principle that foreign conduct is always or automatically
14 relevant. I think it just depends on what the documents being
15 requested are about and the legal theories in the case.

16 So what I got from Epic was a four-paragraph argument that
17 established that, that foreign conduct can sometimes be
18 relevant; and then the argument ended and you said: Look, over
19 there is a big pile of RFPs.

20 So I went through the RFPs and I started reading them.
21 And for some of them, I couldn't figure out why foreign conduct
22 would be relevant. For example, RFP 59 asks about customer
23 awareness or familiarity or lack of awareness with the fact
24 that Apple does not permit a software store other than the iOS
25 App Store and certain other practices, and I'm not sure I

1 understand why this is relevant even for domestic conduct.
2 Maybe this is the Kodak lock-in theory. But then I wasn't able
3 to understand why we care about what people in Hungary or
4 Bolivia are aware of or not aware of and why that would be
5 relevant to the case.

6 And then, like, RFP 28 asks for a bunch of things, but one
7 thing that it asks for is the number of people or the
8 percentage of phone users who use the Find My feature within
9 certain periods of time. And I was struggling to figure out
10 why we need to know how many people tried to find their
11 iPhone last month in Mongolia. I just can't figure out why we
12 would need to know that.

13 And then, for some of your other RFPs, on my own -- I'm a
14 very imaginative person, and I was able to create theories of
15 relevance that seemed logical to me. But then I was worried,
16 as I was doing that, because I don't know if Epic would even
17 agree with those theories of relevance. And what I'm supposed
18 to be doing as a neutral is to be ruling on the litigants'
19 arguments. I'm not supposed to think them up for myself.

20 So I felt like if I was coming up with relevance theories,
21 then I was writing the motion to compel that you should have
22 filed. And also, I was worried about unfairness to Apple
23 because they only had the opportunity to respond to arguments
24 that Epic made. They didn't have the opportunity to respond to
25 things that I think of on my own.

1 So where I'm left with is that my tentative ruling is to
2 deny Epic's motion as to the non-U.S. documents on the grounds
3 that you really just haven't explained anything. You made an
4 abstract point, which is a good one, that foreign conduct can
5 sometimes be relevant, and then you gestured at 70 RFPs. And I
6 was left thinking, well, I don't know that I really should
7 compel anything here.

8 But, Ms. Moskowitz, I've talked for a while now. So why
9 don't I get your thoughts on this issue.

10 **MS. MOSKOWITZ:** Your Honor, thank you.

11 And apologies that we didn't do enough of a tethering to
12 the RFPs. I think it is because we have alleged a worldwide
13 market, and we have alleged that Apple -- both markets are
14 worldwide, both the app distribution and the in-app payment
15 processing market are worldwide markets. And we are asking for
16 information about consumer behavior, competitive behavior, the
17 competitive landscape across the entire world.

18 Now, that is not to say that we have ever -- we have not
19 asked Apple for an Algerian custodian or a Mongolian custodian
20 and searching specific Mongolian -- to use Your Honor's
21 example, Mongolian custodial documents or repositories.

22 What we've asked for is, in order for us to test our
23 worldwide market theory and in order to test that things that
24 are happening in the U.S. are extrapolated to the global market
25 that we believe -- and we believe we will prove -- exists, that

1 we're asking Apple not to withhold where they're already going,
2 to not to withhold non-U.S. documents.

3 For example, in Mr. Federighi's documents, for example, an
4 existing custodian, as they're going through those documents,
5 if he is told of a security breach involving an in-app purchase
6 in Algeria, which is Apple's example, don't withhold that.
7 Don't mark that non-responsive. Give it to us, because we do
8 think it's relevant to Apple's arguments that it provides a
9 worldwide platform, a global, secure, the best out there,
10 according to Apple, in-app purchase processing method.

11 So we want to be able to test that. Are there
12 differences? Why are there differences? Are those differences
13 having effects in the U.S.?

14 So our requests are cabined in the sense of we're only
15 asking them to go beyond the U.S. as to where they're already
16 going. And we've asked for documents sufficient to show yearly
17 aggregate types of data, and we're asking for that on a global,
18 worldwide scale, not just for the U.S., which is how they've
19 already been reporting it as well.

20 So we're not asking for them to go find that Mongolian
21 example Your Honor gave. Or I didn't write down the country
22 for the first one. But I think -- what I'm trying to say is,
23 we are asking, within the confines of the search protocol
24 they've already agreed to, to just, instead of marking
25 non-responsive, mark responsive along the way. We're not even

1 asking them to go back to what they've already done. We're
2 just saying, going forward for the new custodians, include that
3 so that our experts, who are trying to establish a worldwide
4 market -- and that is what we intend to establish at trial --
5 that they have information about security, about consumer
6 preferences, about their behaviors and whether they're locked
7 in. Are there competitors in Poland that are -- that are not
8 present in the U.S.? Why? How is Apple reacting to that?
9 Again, only to the extent they're coming up.

10 And the P&L data and the non-custodial type of data that
11 we're asking for really is important so that we understand the
12 global nature of the business, the App Store business, the IAP
13 business. There's no burden associated with anything that
14 we're asking. We're just asking for not an arbitrary line to
15 be drawn.

16 I hope that's helpful clarification. Happy to answer
17 further questions.

18 **THE COURT:** Since there's no such thing as a global
19 antitrust statute, why should accusations about global
20 market -- why should that matter and guide discovery rather
21 than the laws you've sued under, which are the federal Sherman
22 Act and the California state laws?

23 **MS. MOSKOWITZ:** Your Honor, the Sherman Act is not
24 limited to conduct in the U.S. if that conduct has effects on
25 the U.S. And Apple is operating on a global scale. It is

1 operating across the world in what we believe to be the same
2 way, with the same policies. They tout the global application
3 of IAP. They try to compete on the basis that it is a global
4 solution. And we need to understand how that conduct
5 throughout both the U.S. and abroad are impacting the
6 U.S. market.

7 They've never agreed to stipulate, for example, that the
8 exact same behaviors are across the global, but we are alleging
9 a global market. There is a single agreement. There's single
10 agreements across the world. Apple operates at a global level
11 in the App Store and IAP. And so that is the market that we
12 believe exists. It's not an artifice. It's what we believe
13 actually exists and has impacts on us. We're trying to compete
14 on a global scale as well, as are others. So that is why.

15 **THE COURT:** Okay. Let me hear from Apple.

16 **MR. SRINIVASAN:** Sure, Your Honor. There was a lot
17 there, but I'll try to unpack that.

18 I think we start with where Your Honor starts, which is
19 that ultimately, discovery has to be tied to a relevant claim
20 or defense.

21 They have alleged that this is a global market, and there
22 is one allegation in the complaint -- I think it's repeated a
23 second time -- that they're alleging a global market because
24 Apple sells iPhones everywhere.

25 Well, that's not what they're seeking discovery on. I

1 mean, I think we would stipulate that we sell iPhones and iOSes
2 everywhere. But that's not tethered -- that's not tethered to
3 any of the discovery they seek.

4 But more fundamentally, as you note, the allegations in
5 the complaint relate to conduct in the United States; they
6 relate to U.S. consumers. To the extent that they relate --
7 conduct relates solely to foreign consumers -- so
8 Ms. Moskowitz's example of an Algerian and only Algerian
9 breach -- would not be relevant to this case in any way.

10 Now, that said, just to be clear so the Court
11 understands -- and I hope we made this clear -- to the extent
12 conduct is agnostic as to geography or it includes U.S. plus
13 areas that are affected outside the U.S., they're receiving
14 everything there. Those documents are being produced. And, in
15 fact, they have quite a bit of information regarding the global
16 market, to the extent that they're interested in testing their
17 theories, because we're producing it as part of what we've
18 already been searching for.

19 We're also producing any reference to Epic, even if it
20 relates exclusively to some foreign place. We think that is
21 the test and the most expansive way of producing everything
22 that could possibly be relevant to their claims or our
23 defenses, and we've cabined it that way.

24 Further, they have not given us, as you noted, any basis
25 for why any of the discovery they seek from these foreign

1 places -- exclusively foreign places are related to any of
2 their claims. And we would point back to the FTAIA, to say
3 that if something relates to conduct that affects consumers
4 outside the United States and only the United States, that
5 would not be relevant to their claims here, and those are the
6 only types of documents that we're not producing.

7 **THE COURT:** All right. Thank you.

8 Epic, any reply comments from you?

9 **MS. MOSKOWITZ:** Yes, just briefly, Your Honor.

10 Again, we are not asking them to go get those documents
11 from anywhere other than where they're already getting them.
12 But to the extent that they are showing -- when they go through
13 their custodial documents, to the extent they are seeing the
14 things like I just said, which is the Algerian security breach,
15 for example, that even if it doesn't mention the U.S., that's a
16 breach of the iOS or the IAP, the same systems that they're
17 saying are the most secure in the world and that that's why
18 they have to keep it closed to competition.

19 So all of those are relevant because they're keeping
20 competition constrained on a worldwide scale that is impacting.
21 If there was competition across the globe, but not in the
22 U.S., we might have a very different situation than what we
23 think we do. And so that is why we are looking for that
24 information, and it's no heavier a lift than just going through
25 the documents they're already going through.

1 But on the separate side, the data, which I didn't hear
2 Apple's counsel address, we are asking for data at a very high
3 level, aggregate data. We're not asking for the transactional
4 data worldwide that Your Honor was dealing with at a separate
5 hearing with the class plaintiffs. We're asking for aggregate
6 yearly, sort of worldwide but aggregate-level P&L and costs and
7 expense data that is crucial to understand, not just for the
8 U.S., but globally.

9 **THE COURT:** All right. Okay. Why don't we turn to
10 the next issue, which is RFP 3, and that's the one asking about
11 documents sufficient to show actual and projected revenue,
12 costs, expenses, profits, and so on, for five different
13 products,: iPhone, iPad, iPod Touch, Apple Watch, and
14 Apple AirPods.

15 First let me ask Apple. I didn't see in your letter brief
16 that you were opposing RFP 3 as to iPhone, iPad, and iPod
17 Touch. I understood you to be opposing that only as to Apple
18 Watch and AirPods. Is that correct?

19 **MR. SRINIVASAN:** That is correct, Your Honor.

20 And, in fact, I think there is a line in Epic's portion of
21 the joint brief that says, quote, Apple refuses to search for
22 any data in response to RFP Number 3. And that is not true.
23 We are, in fact, and have produced the responsive material
24 for -- as you said, for the devices: the iPod, the iPhone,
25 and the iPad. It is only about the Watch and AirPods.

1 **THE COURT:** All right. Then let me ask Epic Games.

2 I went through the complaint and read through it in
3 detail, and there are -- when I looked at how the markets were
4 defined, there are constant references to smartphones and
5 tablets, and then there's a term "mobile devices" that's used
6 in their complaint.

7 I'm pretty sure mobile devices was meant to mean only
8 smartphones and tablets. I didn't think it referred to Apple
9 Watch and certainly not AirPods.

10 Do you think I was misreading the complaint?

11 **MS. MOSKOWITZ:** No, Your Honor, I don't.

12 I think what we're trying to establish is market power
13 within those markets, as Your Honor correctly read our
14 complaint to be defining. And one way to do that is to show
15 supracompetitive profits.

16 And one way to show supracompetitive profits in this
17 specific world of iOS is to show not only profits on the
18 specific devices that constitute that market, but also the
19 ancillary products that are so tethered and so dependent on
20 those devices, like an Apple Watch, that can help establish
21 that supracompetitive profits from iOS. Because Apple Watch,
22 I think as most laypeople know, are better for you if you have
23 an iPhone. And so if they're able to charge supracompetitive
24 profits on Apple Watches, it just shows more of the lock-in,
25 more of the fact of switching. People are not going to be able

1 to switch out of the iOS Ecosystem because of all these other
2 products that really rely on you having an iOS device.

3 And so that is what our experts are seeking to try to
4 understand the full scope of how Apple can operate and
5 monopolize the markets that we have defined. And that does
6 make reference to these ancillary products. So they're not in
7 the market, as Your Honor said, but they're relevant for our
8 experts to understand the market.

9 **THE COURT:** One concern I have about introducing Apple
10 Watch is that that also seems to introduce other competitors
11 such as Fitbit and Garmin. And I don't know that you can just
12 look at the profits from Apple Watch and say: Oh, it's all
13 because of iOS. There are just new competitors that are now
14 introduced.

15 And I worry that that starts to make that whole inquiry
16 kind of sprawling. For example, if we didn't have discovery
17 into those new competitors introduced by Apple Watch, then that
18 would present a misleading picture of trying to attribute all
19 the profit to the relevant markets as alleged here. But then,
20 if we did get into that in discovery, then this case just sort
21 of broadens in ways that seem unjustified.

22 So can you speak to that concern.

23 **MS. MOSKOWITZ:** Yes, Your Honor.

24 We're not trying to establish an Apple Watch market. What
25 we're really just trying to establish is that, unlike the other

1 devices Your Honor just mentioned, the Apple Watch really is
2 tethered to the -- to being in the iOS Ecosystem already. And
3 so it is relevant to switching costs that people are -- that
4 Apple is generating that much money through the Apple Watch.

5 And, Your Honor, we're not looking for full-blown
6 discovery on Apple Watch or its market share or any of that.
7 We're really just trying to understand the costs, the revenue,
8 and the expenses on a yearly basis by country.

9 So it's not that we're trying to open a whole can of worms
10 and try to establish a whole other market with its competitors
11 and market sensitivities or anything along those lines. We're
12 really just trying to get the aggregate data that we know Apple
13 tracks because our experts view it as relevant to try to
14 understand the full universe of the iOS Ecosystem, which does
15 include, in their view, iOS-dependent ancillary products.

16 We're actually not asking for every -- I'm sorry,
17 Your Honor.

18 **THE COURT:** No. My question, though, is: How can
19 you -- say you get all this information about Apple Watch and
20 AirPods. How can you know if Apple is charging
21 supracompetitive prices without knowing what Garmin and Fitbit
22 charge, what other headphone manufacturers charge? You could
23 know they make a lot of profit, but you couldn't know it's
24 supracompetitive, could you?

25 **MS. MOSKOWITZ:** No, Your Honor. We're not

1 necessarily -- and I don't think we need to. I think the point
2 is just to understand the full scope of how Apple is generating
3 profits as a whole.

4 And so understanding revenue and costs and expense data
5 for the Apple Watch, that won't say that Apple Watch is
6 supracompetitive vis-a-vis a Fitbit, which is not what we're
7 trying to establish. But we're trying to establish that the
8 profits that Apple is generating as a whole from its suite that
9 are all dependent on this iOS that people can't switch away
10 from and all of the other aspects of what we're trying to
11 prove, that Apple Watch profit and the AirPod profit are part
12 of that whole analysis.

13 **THE COURT:** So would this line of reasoning also
14 justify discovery into the profits from the wristbands on the
15 Watch?

16 **MS. MOSKOWITZ:** Your Honor, we -- I think,
17 technically, yes; but we've narrowed our request to not do the
18 chargers and the cables and all of that stuff.

19 So we have narrowed it. Because I do think, logically, we
20 probably could bring in every single thing that depends on
21 Apple products; but we did try to narrow it and be targeted,
22 both at the types of ancillary products as well as the type of
23 data we're requesting.

24 **THE COURT:** All right. Thank you.

25 Apple, let's hear from you.

1 **MR. SRINIVASAN:** Yeah. Your Honor, I mean, we
2 generally agree with your comments.

3 Ms. Moskowitz just said: We're not interested in
4 establishing supracompetitive products from the Apple Watch,
5 when that is exactly what they're saying they wanted it for in
6 their papers.

7 And as you note, they couldn't make that determination
8 without sweeping in a lot of other third-party discovery on
9 competing watches and also on competing headphone
10 manufacturers, and leave alone the fact that AirPods can be
11 used with other devices. It gets incredibly complicated. This
12 is a very attenuated issue, to begin with, not much different
13 than cases and chargers and wristbands.

14 They have Apple's overall profits. If they want to show
15 it's a profitable company, they can. To go to the Apple Watch
16 or the AirPod really has, again, almost no bearing on any issue
17 in this case.

18 The case -- Epic doesn't design games for the Watch. As
19 we pointed out in our brief, Judge Gonzales Rogers noted that
20 she's looking at this as the relevant market as the game
21 market. And, in fact, in that same page in the transcript,
22 Epic's counsel responded and said (reading):

23 "Well, I think it's not necessarily a games
24 market, but the app distribution market on the
25 iPhone."

1 Well, they're getting everything about the App Store.
2 They're getting everything about the iPhone. That's the
3 market in which we are, you know, involved in this case.

4 And for them to -- you know, on this idea that there's
5 sort of stickiness, this theory that I just heard from
6 Ms. Moskowitz, it's not in their papers, doesn't really apply
7 to the developer -- a developer like Epic in any event.

8 Lock-in is typically something that you see with respect
9 to a consumer case, but not -- and even that's a disfavored
10 theory, but that's a theory where you can potentially see it.

11 But Epic doesn't face any of those issues. Epic
12 distributes for a variety of platforms. And the question is:
13 Does Apple have power in the distribution of apps for games?
14 And the Watch and the AirPod really have nothing to do with
15 that.

16 **THE COURT:** All right. Any reply comments from Epic?

17 **MS. MOSKOWITZ:** Your Honor, just briefly, because
18 Apple said a couple of times that they're giving us everything
19 that we've asked for, including in response to Your Honor's
20 question.

21 My understanding is Apple is standing on the U.S.-only
22 objection as to this request as well. So there's that issue.
23 We do need -- we do still seek this on a global basis, as the
24 request calls for.

25 I don't know if Apple intended to indicate that they're

1 going to give that to us on a worldwide basis. But I don't
2 have anything else to say on the specific question on Watch and
3 AirPods other than what I've already said.

4 **THE COURT:** Okay. All right. Thanks.

5 And then RFP 5, Epic cited a specific Apple document by
6 Bates number that, on its face, indicates that Apple is at
7 least able to estimate revenue from in-app purchases
8 specifically, and not just revenue from the App Store as a
9 whole. And yet Apple's portion of the letter brief kind of
10 flat-out states that that information doesn't exist.

11 And I was just -- Mr. Srinivasan, if you could speak to
12 that, because I'm looking at a document that seems to say that
13 at least this information can be estimated and that executives
14 at least sometimes do that and then your letter brief, which
15 sort of defiantly says that this document doesn't exist.

16 And so I'm having a little bit of the same reaction I had
17 last time when Apple told me some information didn't exist and
18 I said, well, there's this P&L sheet that seems to have it.

19 So can you talk to that.

20 **MR. SRINIVASAN:** Sure, Your Honor.

21 There's two pieces to this issue, and I think I can clear
22 that up a little bit.

23 RFP Number 3 specifically asks for revenue, cost, and
24 expense, and things like that, related to what they -- a
25 defined phrase of theirs, "IAP."

1 If you look at their definition in the RFPs, they define
2 IAP based on the developer agreement, a section which
3 essentially is the IAP API. In other words, it's the
4 functionality in the App Store that processes in-app payments.
5 It's software code.

6 And so what we've said to them throughout -- and this is
7 an issue in this case, as you know, wherein they are claiming
8 that this IAP API is a separate product -- we've said it's not
9 a separate product. It's just a piece of the App Store.

10 And so when they asked us in this RFP Number 5, in terms
11 of revenue, expense, and profitability related to this IAP
12 code, this API, we said this is sort of a nonsensical RFP
13 because it's like saying the cash -- what is the revenue
14 associated with the cash register in a retail store? Well,
15 there's revenue for the store. There's no revenue associated
16 with the cash register.

17 And that was the primary basis for our objection to
18 Number 5 and Number 30. There is no conceptual revenue, cost,
19 expense associated with the IAP code.

20 That said, there is another RFP Number 8 where they ask
21 for revenue, costs, same type of information for the iOS
22 App Store. And, of course, for the iOS App Store, we are
23 producing every possible iteration of revenue either coming
24 from an app purchase or an in-app purchase, the commissions
25 associated with each in terms of percentage and absolute

1 number, as part of the transactional data production. So
2 that's number one.

3 We've said: You are getting revenue that you can then
4 take, slice and dice.

5 **THE COURT:** Let me interrupt you here. Apologies,
6 Counsel. But you're not really speaking to the heart of the
7 issue.

8 I understand that for Apple's internal reporting
9 structures, Apple may not deem revenue to be associated with
10 in-app purchases and it might deem it just to be at the store.
11 And it may be that that reporting structure is what ultimately
12 goes into documents that are filed with the SEC. I understand
13 companies have certain ways that they account for things.

14 And yet, I'm staring at an e-mail that seems to say that
15 even though Apple reports things that way, at least on one
16 occasion, they were able to estimate what was due specifically
17 to in-app purchases. So that is possible.

18 And so that's the problem I'm having. I get that Apple
19 might say: For a certain reporting purposes, we don't
20 associate revenue with IAP in particular. But then somebody
21 was able to do that. That's my concern.

22 **MR. SRINIVASAN:** And, Your Honor, again, yes, we can,
23 in fact, say that the revenue came from a particular stream;
24 and, in fact, we do have that -- you have seen that document
25 that they have identified. And I apologize for not getting to

1 this sooner.

2 But we -- that particular document that they identified,
3 which is a weekly -- I think it's a weekly dashboard or has a
4 name similar to that, weekly summary -- there are roughly 700
5 iterations of that document in the custodial production that we
6 have produced that provides that weekly summary. It's not
7 always the same amount of detail in it. It does vary from week
8 to week at times. But much of that information, to the extent
9 we have it in the custodial production, there is no
10 non-custodial repository for that information, we've produced
11 it.

12 Not only that, there are other types of documents. There
13 is a second document that they referenced in their section that
14 ended in 3313. I think it was with respect to their argument.
15 In the non-U.S. piece, at the very end of their argument, they
16 site both the document that Your Honor identified and another
17 one. There's 100-plus iterations of that document in the
18 custodial production that we had produced.

19 We had said to them early on that: You are getting much
20 of this in the custodial production, and we don't keep it as a
21 segregated basis.

22 But the individuals who create that kept it as custodians,
23 and they were all produced, hundreds of them.

24 **THE COURT:** Okay. Well, then I am going to order you,
25 in response to RFP 5, to produce documents that show revenue

1 specifically associated with in-app purchases. It might be
2 that your response is to say you already did that. Since I
3 haven't seen those documents, I won't know. But I am going to
4 tell you to do that. And if that's where this information is
5 and you've produced it, then maybe you're all set.

6 **MR. SRINIVASAN:** That would be fine with us,
7 Your Honor.

8 **THE COURT:** What about the other things: the costs,
9 expenses, investments? Even if in Apple's formal reporting,
10 you don't -- Apple doesn't associate certain costs or
11 investments with in-app purchases, are there other ways that
12 can be estimated, or is that truly non-existent?

13 **MR. SRINIVASAN:** Well, Your Honor, it truly is
14 non-existent. This is sort of a replay, I think, of the
15 conversation you had with Mr. Dettmer a few weeks ago, wherein
16 occasionally folks have done this on an ad hoc basis. And you
17 asked for us to go investigate, you know, that individual's --
18 whatever data they relied on in their methodology.

19 That's the issue again here. We do not track the cost and
20 the other information that they're asking with respect to the
21 App Store.

22 To the extent we are already looking for it because
23 Your Honor ordered us to do that, we are doing that. And if we
24 find something, we will certainly provide it.

25 Two specific issues, though, that should flow from this

1 and is mentioned in their brief. One is -- you know, and
2 there's the excerpt from Mr. Fischer regarding fees paid to
3 credit card companies and other third-party payment providers
4 or processors. That is a separate request, 18 and 19.
5 I believe there's two requests that they've asked for. And we
6 are looking for that information, and we'll be providing that
7 information to them on a non-custodial basis. That's a cost
8 that they identified, a discrete cost. We don't necessarily
9 allocate that to the App Store, but we went and are looking for
10 it.

11 And also, we have agreed when they asked us -- I think
12 it's RFP 10 -- for the compensation information, what we pay
13 our app reviewers, which they're characterizing as a cost,
14 that's fine. We keep that separately, and we are producing
15 that as well.

16 So where they have identified particular costs, we have
17 endeavored to look; and if we have it, we are producing it.

18 **THE COURT:** But I take it from your comments in the
19 letter brief that your view is those are going to be costs of
20 the App Store at large. Those are not just IAP costs; right?

21 **MR. SRINIVASAN:** That's right, Your Honor. As
22 mentioned, we don't really associate it -- we don't look at
23 that as a product. And on top of it, even Apple doesn't
24 necessarily even do much in terms of allocating costs to the
25 App Store in any kind of organized way.

1 **THE COURT:** I see.

2 Ms. Moskowitz, your response.

3 **MS. MOSKOWITZ:** Your Honor, it's difficult for me to
4 know how Apple tracks things. But we did get the sense that
5 credit card fees, for example, would be associated with in-app
6 purchase.

7 And it sounds like Apple is only responding to the extent
8 we've identified specific costs. But we don't know what the
9 costs are or how they're tracked. And we do have concerns that
10 IAP -- and if we've done it in the wrong technical definition
11 in our request, I worry that that's what Apple's resting on,
12 instead of actually stepping back and looking at the real
13 question here is: Are there costs and expenses that are
14 attributable to the IAP as opposed to the App Store generally
15 so that we can understand how -- what Apple's profits are, what
16 their margin is, how things are tracked? Are they making
17 investments in IAP, or are they not making investments in IAP?

18 And I don't know where to go for that. And I -- and we're
19 asking Apple for that. And sort of hearing that we made the
20 wrong technical definition of IAP in our request; thus they
21 don't have anything responsive, is concerning.

22 But we do have a sense that based on the fact that we get
23 these expenses being tracked, we are concerned that they might
24 exist. And I don't know how better to ask for them other than
25 how we've done.

1 **THE COURT:** Okay. Well, for revenue, with that
2 document that you provided, you did prove to me that they have
3 a way of tracking in-app purchase revenue different from
4 App Store revenue as a whole. So I'm going to say that in the
5 order and order Apple to produce those.

6 And as you've heard from Mr. Srinivasan, I think Apple's
7 likely going to say they did because that's in their e-mails.

8 As to the cost stuff, I don't know what Apple has. I read
9 the excerpt of Mr. Fischer's deposition, and even though the
10 question was phrased in terms of in-app purchases, his answer
11 seemed broader. And so that testimony didn't persuade me that
12 they have a specific allocation of credit card fees to IAP as
13 distinct from the App Store generally. It looked to me like he
14 was talking about the App Store in general.

15 And so, but my thought is to order Apple to produce
16 whatever it has that's responsive to RFP 5, and they're going
17 to have to go tell you what there is. But I don't know how
18 else to handle it better.

19 I mean, you know so much more about the facts than I do.
20 And if even you don't know what Apple has, then I really don't
21 either.

22 So is there anything else that you think I can do on that,
23 Ms. Moskowitz?

24 **MS. MOSKOWITZ:** With respect to RFP 5, which is what
25 we're talking about, I would like clarification that Apple's

1 going to make sure that they've given us this data globally and
2 not just for U.S., because that is what the request was. And
3 it's really just looking by year.

4 And if the answer is: You have every single weekly
5 scorecard between -- for the relevant time period and they want
6 to tell us that we do that and where they are, then, okay, we
7 can do the math on that.

8 But it's clearly that there's something generating these
9 reports on a weekly basis that is not sitting in someone's
10 e-mail files but, rather, is being pulled from something.

11 The e-mail Your Honor pointed to that mentions that 620,
12 I think, million, it is, is actually in the scorecard itself.
13 It's on page Bates ending 527, where it has this billings for
14 the week that breaks down the 700 -- I'm sorry. I don't know
15 if I'm supposed to be saying --

16 **THE COURT:** They might file a motion to seal this part
17 of the transcript.

18 **MS. MOSKOWITZ:** Okay. I just stopped myself.

19 But it says a number, and then it says below that the
20 specific for in-apps and then a specific number for
21 subscriptions.

22 And so we're trying to -- that data came from somewhere,
23 and we're asking them just very much hit a button to give us
24 that on a yearly basis, by country, by year. And that's what
25 we're asking for on the revenue. It seems very simple, rather

1 than pointing us to a bunch of e-mails produced with
2 attachments.

3 **THE COURT:** Well, let me ask Apple.

4 What about that?

5 **MR. SRINIVASAN:** Your Honor, I -- by the way, just as
6 a preface, we do -- we would want to be careful about what sort
7 of highly confidential AEO information is disclosed in the
8 transcript. And we'll take a look at that and submit
9 something, you know, to be sealed immediately if it's
10 warranted. So we do take that seriously.

11 But on the question of revenues, you know, I didn't quite
12 follow what Ms. Moskowitz was saying. But what we can tell you
13 is, unequivocally, again, IAP is just a function. It's like a
14 cash register. There's no cost when you go to a store and say:
15 Well, how much was your profit margin on your cash register?

16 What I think that's being conflated here and I think where
17 you were right about where Mr. Fisher's testimony was, he's
18 talking about the App Store. This only makes sense in the
19 context of the App Store. And the App Store has revenue. One
20 stream is through in-app purchases. Not the API, which is how
21 they it defined it, but the App Store itself has revenue, has
22 profit, you know, and that much we do track. That's RFP 8. We
23 are producing that for the U.S. storefront.

24 **THE COURT:** On the U.S., not for global?

25 **MR. SRINIVASAN:** Not for global, except, as noted,

1 they have roughly almost 700 instances of this weekly summary
2 that does often -- not in every instance, I don't believe, but
3 in many cases, depending on the week, include some global
4 information.

5 And again --

6 **THE COURT:** This example was global. It had the whole
7 world in it.

8 **MR. SRINIVASAN:** Yes, yes. And often it does. And
9 we're not withholding that because it includes also
10 U.S. information.

11 If we had some repository of this information that was
12 simply non-U.S., we don't believe we're required to look for it
13 for the same reasons Your Honor mentioned at the top of this
14 hearing.

15 But to the extent they frequently will include both
16 U.S. and non-U.S., that's been produced. They have it. They
17 have plenty of information to look at and compare. And I would
18 respectfully suggest they at least do that. I don't think
19 they've even tried to look at what they already have to say:
20 We have X; we need some more.

21 **THE COURT:** Well, one question that -- or one issue
22 that she pointed out to you is that there's a field that seems
23 to show in-app purchases. And so the information isn't only in
24 that cover e-mail because that report is generated out of a
25 database. And so it seems like there should be a non-custodial

1 source of the in-app purchase revenue. What about that?

2 **MR. SRINIVASAN:** Well, yes. And, in fact, that's the
3 source that we're producing. That's the transactional data
4 that we're producing to all plaintiffs in January.

5 **THE COURT:** Oh. That's without the others.

6 **MR. SRINIVASAN:** Yes. And that provides -- that will
7 tell you whether the revenue to the App Store came through the
8 IAP or it came from an up-front purchase of the app itself,
9 which are really the two primary means in which revenue comes
10 into the App Store. And that's all set out in detail, every
11 single transaction, since the very first transaction in the
12 App Store, Your Honor.

13 **THE COURT:** Okay. Thank you.

14 Ms. Moskowitz, does that help?

15 **MS. MOSKOWITZ:** It doesn't because they're only doing
16 that for the U.S.

17 So I'm not asking for every single transaction for the
18 entire world. I certainly don't want to have to add up all
19 those numbers. And it sounds like there's a button you can
20 push to add those numbers up, to print out an example of what
21 we just attached to Your Honor. And we're asking for them to
22 push that button and give that information to us, not just for
23 the U.S., but for year over year by country.

24 And so we just heard it does exist. And we just -- it can
25 clearly be queried. So we just don't see why it can't be

1 queried and given to us on a yearly basis, like we asked in a
2 very targeted way that we asked.

3 **THE COURT:** All right. Okay. Well, I have what I
4 need to issue an order. I'll hope to get it out within a day
5 or two.

6 I know we have upcoming briefing on at least the Apex
7 issue. Are there any other -- now I'm including all the
8 different sets of plaintiffs. Are there any other briefing
9 schedules we need to talk about, or are we good with the
10 existing ones that we have in place?

11 **MR. SRINIVASAN:** Well, Your Honor, we do -- for Apple,
12 we have, I think, a hearing also set for the 8th regarding a
13 follow-up on one of the plaintiff's RFPs, with briefing,
14 I think, due on the 6th. We have a few disputes that we would
15 also like to raise on that date, potentially, if we can't work
16 it out.

17 We are working with Epic on adding some custodians of
18 Epic's, just as Apple added custodians, and we may have a
19 dispute there, Your Honor.

20 And we also have data requests, just like Epic has of us,
21 that we're, again, trying to work out. We may have a dispute
22 there.

23 And lastly, we may have another dispute with Samsung that
24 flows from their prior hearing we had with Your Honor and the
25 order and issues we're having with their compliance. They're

1 not here, but I won't say more.

2 But we do have those issues that we'd like to tee up for
3 next week, for that 8th hearing.

4 And before I turn it over to plaintiffs' counsel,
5 Your Honor, we have one other issue, and it just sort of was
6 implicated again, although differently.

7 We do have that motion to seal based on what we believe to
8 have been a disclosure of highly confidential AEO material. I
9 know Your Honor has the sealing motion under submission.
10 Plaintiffs -- developer plaintiffs are not, I don't believe,
11 opposing that. But in their submission, nor did they really
12 get to the heart of the issue in terms of whether they made a
13 disclosure or not. That is a motion that we may bring, a
14 motion for sanctions.

15 And the question that we have for Your Honor is: Is that
16 a motion that we would bring before you? I mean, the
17 disclosure did occur in a proceeding of yours. Or would that
18 be -- would you suggest that we bring that before
19 Judge Gonzalez Rogers?

20 **THE COURT:** So was this a disclosure during a hearing?

21 **MR. SRINIVASAN:** Yes. It was during the December 15th
22 hearing in front of Your Honor.

23 **THE COURT:** Oh, I see. Remind me. Have you filed a
24 motion to seal that portion of the transcript?

25 **MR. SRINIVASAN:** We have, Your Honor, and that's

1 submitted before you.

2 **THE COURT:** Okay.

3 **MR. SRINIVASAN:** And so we would need you to rule on
4 that. And then the question is, you know -- to the extent we
5 will be bringing a sanctions motion, you know, the question is:
6 Where would we bring that?

7 On the one hand --

8 **THE COURT:** I see.

9 **MR. SRINIVASAN:** Right.

10 **THE COURT:** I think you should bring it before me
11 because it's a hearing that happened before me. And this is
12 all within the umbrella of the discovery reference.

13 **MR. SRINIVASAN:** Okay.

14 **THE COURT:** One issue to think about is, if your
15 opponent discusses confidential AEO material in a hearing --
16 I guess the hearing is public, is the issue. So even sealing
17 the transcript isn't a good enough remedy.

18 Okay. Well, you can discuss those things in your motion.

19 **MR. SRINIVASAN:** Okay. Thank you, Your Honor.

20 **THE COURT:** And let me hear now from the plaintiffs on
21 any big plans you may have for additional discovery disputes.

22 **MR. LOPEZ:** So, Your Honor, this is Rob Lopez for the
23 developers.

24 Just a few issues that I'm not sure will ripen into actual
25 motions, but one thing we wanted to raise is the fact that,

1 unfortunately, Apple has gone dark with respect to our
2 questions about the transactional database and whether it
3 intends to produce by tomorrow. We've asked for information
4 about that to coordinate logistics if it's going to do that.

5 Mr. Srinivasan, a moment ago, said that they're going to
6 produce the transactional data in January. I don't know if he
7 meant cost and expense data at that point or if he was talking
8 about the large transactional revenue database that we've also
9 been speaking about and that implicates the request for
10 extension that we made.

11 So I'd like some clarity there, and it would be wonderful
12 if we could know if they're going to actually produce tomorrow.
13 We've corresponded with them and said that, in our view,
14 production means getting it to us tomorrow. It's the COVID
15 era, unfortunately. We've offered to have somebody on standby
16 to receive it if they're going to do that, but time is of the
17 essence if they're going to do that, you know, again, in
18 service of this February 3rd current deadline on class cert.

19 So we're hoping to get some clarity there today and hoping
20 to get instruction from the Court on that.

21 **THE COURT:** I think Judge Gonzalez Rogers addressed
22 this by giving them -- saying that they either had to produce
23 this by December 31st or she would change the class cert
24 briefing schedule. And then the mechanism for you learning,
25 I believe she said they had to file something on January 4th.

1 Is that correct?

2 **MR. LOPEZ:** That's correct.

3 **THE COURT:** Okay.

4 **MR. LOPEZ:** But, again, Your Honor, I mean, if nothing
5 else, as a matter of professional courtesy, it is the holiday
6 season as well, and getting staffing issues attendant to COVID
7 as well, it'd be wonderful if we knew if they were actually
8 going to produce this to us tomorrow.

9 And for some reason they've declined to tell us whether
10 they're even trying to do that, despite our repeated requests.

11 So it's really, in my view, unfortunately, unprofessional
12 to not have substantive responses to our questions in that
13 regard.

14 **THE COURT:** Well, I'm not going to add to the
15 reporting requirement that Judge Gonzalez Rogers has laid out.
16 She gave them a deadline and then told them that on
17 January 4th, they have to follow up and let her know whether
18 they did that or not. And so I'm just going to let that sit
19 where it is.

20 **MR. LOPEZ:** Okay. Thank you, Your Honor.

21 The next issue is with regard to depositions, which,
22 again, has been an issue that we have brought before the Court.

23 The parties have asked for various dates from Apple.
24 Apple has given us dates later than we asked for for four
25 deponents. We're particularly concerned about no dates yet for

1 Mr. Schiller, Mr. Gray, who, in our view, have very much to do
2 with our class cert briefing. And Mr. Srinivasan himself
3 referred to Mr. Schiller as somebody who obviously does have
4 information relevant to our motions.

5 We still don't have dates. We asked for dates prior to
6 January 15. We've gotten nothing from them with regard to
7 those two. And so we'd like to get those dates going. And I
8 hope we don't have to wait to bring a motion to the Court, but
9 we need those dates.

10 **THE COURT:** Okay. Well, then what I'm going to say
11 about that is, I encourage Apple to provide dates as soon as
12 you can. If the parties are at an impasse, please reach out to
13 my courtroom deputy. We can probably do that one -- we might
14 not need a discovery letter brief. You can certainly file one
15 if you need to. But, Apple, I do think you need to at least
16 get back to the plaintiffs with dates.

17 Are you prepared to do that?

18 **MR. SRINIVASAN:** Your Honor, to be clear, we have --
19 they've asked for eight people. We gave dates for four. We
20 did provide dates. We are working on the other four.

21 And, I mean, it's a little galling to hear that, you know,
22 it's the holidays, where my client has been working on a number
23 of fronts, on document issues and deposition issues, to do all
24 manner of things to accommodate what plaintiffs are asking for,
25 and we're doing it, we're working on all of these things over

1 the holidays ourselves and have provided them four of the eight
2 requested dates and are working on the other four.

3 **THE COURT:** Okay. Well, please keep working. We've
4 all been very busy over this holiday season with these cases.
5 So we're all experiencing the same amount of Christmas joy with
6 respect to that. But keep going. It is important to got these
7 depositions on calendar.

8 **MR. LOPEZ:** And then --

9 **THE COURT:** Go ahead.

10 **MR. LOPEZ:** And then just two more issues, Your Honor,
11 that hopefully won't ripen into a need for motions practice,
12 but they could.

13 Back to the transactional database. Apple has told us
14 that there are X number of fields in its transactional
15 database, and it doesn't want to reveal what all those fields
16 are. It wants to simply say that it's not going to tell us.
17 It's going to describe a few of those fields generally.

18 And we're disturbed by that, obviously, because Apple is
19 making this unilateral determination that these things don't
20 matter.

21 So we've asked Apple to give us more information with
22 regard to those. I'm not sanguine that Apple is going to do
23 that, so that may be something we have to bring to the Court
24 very soon as well.

25 **THE COURT:** Okay. Let me ask Apple.

1 I was under the impression that you were going to tell the
2 plaintiffs what the fields are in the data you're producing.

3 **MR. SRINIVASAN:** Yes, Your Honor. And I think the
4 order was -- I don't have it in front of me but -- was that if
5 there were lots of fields, that we didn't have to necessarily
6 detail all of them.

7 There's 520 fields, and my understanding is that we
8 described categories of those fields.

9 **THE COURT:** Oh, sorry. I think maybe we're talking
10 past each other.

11 There's the transactional data, the big data set that you
12 were going to produce. And then, separately, I thought the
13 plaintiffs had other RFPs that asked for, like, every field
14 that Apple has related to the App Store.

15 **MR. SRINIVASAN:** That is right, Your Honor. And I do
16 think that's what I -- that was what I was attempting to
17 address. And I believe Your Honor's direction was that, within
18 reason, we had to do that; but if there was an overwhelming
19 number of fields, we didn't have to go and catalog each one.
20 And we are in --

21 **THE COURT:** I don't have my order in front of me, but
22 that sounds like something I said.

23 I was -- Mr. Lopez, maybe I misunderstood you. I thought
24 you were talking about the big data set, the relational data
25 set that Apple was going to produce. You were saying that they

1 weren't going to tell you what all those fields were.

2 Did I misunderstand you?

3 **MR. LOPEZ:** No. That's correct, Your Honor. There
4 are -- again, Mr. Srinivasan is the one who's revealed the
5 number of fields. I wasn't going to do that.

6 But there are a large number of fields available.

7 However, it's not that large relative to the size of the
8 database. And Apple has provided us with a few categorizations
9 of what's supposedly in those fields, but we'd like to do the
10 examination ourselves. And in our view, Apple has not made a
11 showing to us, at least, of undue burden in order to produce
12 those additional fields for us to examine.

13 **THE COURT:** Okay. Well, Mr. Srinivasan, let me ask
14 you. And maybe I misunderstood. But I thought that there were
15 lots and lots of fields potentially associated with the
16 App Store, and that the relational data set you were producing
17 is not all of those but is a relevant subset of those.

18 Have I misunderstood?

19 **MR. SRINIVASAN:** I don't want to speak out of school,
20 Your Honor, because I don't know that I know the answer to your
21 question, as that was more one of my colleague's area.

22 That said, we have identified -- for the relational data
23 set, my understanding is there was an agreement on what fields
24 we would produce, and we identified every one of those fields.

25 On the delta of if there are additional fields or not, I

1 don't know what the negotiation was or what the history of that
2 was.

3 **THE COURT:** Okay. Because I think that for the
4 relational data set that you've produced, when you say, "We've
5 looked through all the possible fields and here are the fields
6 that we think are relevant and we're producing these to you,"
7 then I do think you have to tell them what those fields are
8 because Apple is representing that it has -- these are the
9 relevant ones. And you're turning them over in the relational
10 data set. And just to make sense of what the relational data
11 set is, you need to tell them what all those fields are.

12 And as for the delta and all the other fields that may be
13 in the App Store, I think my prior order addressed those. And
14 I don't think I necessarily told -- I don't believe I told you
15 to identify a huge number of fields that was burdensome.

16 **MR. SRINIVASAN:** My understanding is we are complying
17 with your order in this respect. And we have sent the
18 plaintiffs a letter on that. If they have an issue with it, we
19 would certainly meet and confer with them. But we are, we
20 believe, complying with your order from two weeks ago.

21 **THE COURT:** Then, Mr. Lopez, it seems like what
22 plaintiffs need to do is, once you get your hands on that
23 relational data set, you need to look at it and see are there
24 any fields in it that you don't understand. And then you can
25 go to Apple and say: Hey, what's this field?

1 **MR. LOPEZ:** True enough, Your Honor, and we intend to
2 do that. However, there are these additional fields that are
3 out there. And, again, our questions relate, as to these
4 additional fields, as to whether or not, in fact, these are
5 things that we should be getting as part of this production.

6 But, you know, harkening back to something Ms. Moskowitz
7 said, we just don't know what's out there. And in our view,
8 this has been a continuing problem with Apple that's outside
9 the spirit of the guidelines in the Northern District of
10 cooperation on ESI.

11 So we'll continue to speak with them. But the Court asked
12 if there may be additional things that we need to tee up soon,
13 and that may be something that we need to tee up soon.

14 **THE COURT:** Okay. Thank you for the preview.

15 **MR. LOPEZ:** Thank you, Your Honor.

16 And the last thing, if I could, the Court will recall that
17 it ordered production of certain cost and expense material.
18 Don't have a handle yet on when Apple intends to produce that.
19 I believe the last communication was that it would intend to do
20 so promptly. Obviously, again, our class cert deadline as of
21 today is February 3rd. So we certainly hope that Apple means
22 promptly in the sense of within the next week or so. So that
23 may be something that we need to bring to the Court if it drags
24 on past that.

25 But we've also, I think, almost ripened into an impasse,

1 if not at an actual impasse, with regard to certain requests
2 that we have made pursuant to the Court's order for certain
3 linked materials, reference materials, that sort of thing. As
4 I understand it, there are ten out there that we've identified.
5 Apple seems to think that we need to do more to identify what's
6 there or it's declining to produce. I don't really know what's
7 going on there. But that's a hot issue as well that we may
8 need to bring to the Court if we can't resolve that within the
9 next couple of days.

10 **THE COURT:** Okay. Thank you.

11 Any previewing that Epic or the consumer plaintiffs want
12 to raise? You don't have to, but I just thought, as long as
13 we're thinking about what the next month is going to look like
14 in terms of upcoming discovery disputes, if I know what's
15 coming my way, then that's helpful to me.

16 **MS. BYRD:** Your Honor, you set a hearing for the 8th
17 for the international transactional data that the consumers
18 were seeking. And you also ordered us to further meet and
19 confer about the consumer demographic and usage information.
20 And we haven't made much progress on that. So I anticipate
21 combining those issues into one letter brief to both be heard
22 on the 8th. I just wanted to give you a heads-up on that.

23 **THE COURT:** Okay. Here's this, and this will also get
24 to Mr. Srinivasan's comments about additional issues that Apple
25 may want to raise.

1 For any letter briefs that you want me to hear on
2 January 8th, please have those filed by noon on January 6th. I
3 just need some time to read through them and prepare. So a
4 noon deadline on January 6th for anything you want me to hear
5 on the 8th.

6 And I'm going to give you the same admonition that I gave
7 you at the December 15th hearing about letter briefs, which is,
8 you should make sure that for each letter brief, you discuss a
9 number of discrete issues that you can discuss with reasonable
10 detail in the page limit provided. But there's no limit on the
11 number of letter briefs.

12 What I don't want you to do is to have really cursory,
13 brief arguments and try to cram in a lot of issues into a
14 five-page letter brief because that's just not helpful because
15 I don't have the explanation that I need.

16 So if you need more robust discussion of issues, then put
17 them into different letter briefs. And the order that's going
18 to come out of today's hearing is going to remind you all of
19 that as well because I began with this thought, which is that
20 Epic made an argument about non-U.S. documents, it was very
21 brief, and then they just sort of gestured at 70 RFPs. And
22 that's not the way that I want to hear a briefing.

23 So don't cram a lot of things into each particular letter
24 brief. Just make sure that you identify a couple of subjects
25 that you can discuss in enough detail that it can be

1 persuasive. And then, beyond that, do additional letter
2 briefs. All right?

3 **MS. BYRD:** Yes, Your Honor. I just have a clarifying
4 question.

5 At the last hearing, we had mentioned we had offered to
6 submit a declaration from our expert in support of needing the
7 international transactional data. I have that declaration.
8 Ordinarily, Your Honor's rules don't allow that sort of thing
9 to be attached. But is it okay in this situation?

10 **THE COURT:** Oh. I thought -- oh. I thought my prior
11 order contemplated that you would attach it. Like, I need to
12 read the declaration.

13 **MS. BYRD:** Okay. Yeah. I just wanted to make sure --

14 **THE COURT:** Okay.

15 **MS. BYRD:** -- because it's sort of contrary to your
16 standing orders.

17 **THE COURT:** Okay. Yes, please go ahead.

18 And I think I also invited Apple to submit their own
19 declaration if they wanted to. And, of course, they can attach
20 that as well.

21 **MS. BYRD:** Okay. Thank you.

22 **MR. SRINIVASAN:** Thank you, Your Honor.

23 **MS. MOSKOWITZ:** Your Honor, nothing specific other
24 than to say -- or to ask, I suppose, is there any time limits
25 or issue limits that Your Honor has for next week? Because I

1 know Apple's contemplating potentially adding. We may have a
2 couple that we're trying to wrap up as well, hopefully we can
3 wrap up without dispute. But is Your Honor constrained in any
4 way with what we put on your plate for next week?

5 **THE COURT:** Good question. The answer is yes, because
6 I have a settlement conference starting at 10:00 a.m. So if
7 there's too much to cover in an hour, I'm likely to start the
8 hearing earlier at 8:00 a.m. Ms. Moskowitz, you won't care
9 because you're in New York; so that's convenient for you. But
10 I'm probably going to be maxed out at two hours for that
11 hearing.

12 **MS. MOSKOWITZ:** Okay. Thank you, Your Honor.

13 **MR. SRINIVASAN:** Thank you, Your Honor.

14 **THE COURT:** All right. Okay. All right. Thank you,
15 Counsel. And as I said, I'll look to get an order out within
16 the next day or so.

17 **MS. MOSKOWITZ:** Thank you very much, Your Honor.

18 **MR. LOPEZ:** Thank you, Your Honor.

19 **MR. SRINIVASAN:** Thanks very much. Happy New Year,
20 everybody.

21 **MR. LOPEZ:** Happy New Year.

22 **MS. MOSKOWITZ:** Happy New Year.

23 **THE CLERK:** Thank you, everyone.

24 We're off the record. Court is in recess.

25 (Proceedings adjourned at 10:59 a.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Wednesday, December 30, 2020

Ana M. Dub

Ana M. Dub, CSR No. 7445, RDR, RMR, CRR, CCRR, CRG, CCG
Official Reporter, U.S. District Court